

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

ADDRESS REPLY TO
OFFICE OF THE ATTORNEY GENERAL
MINNESOTA POLLUTION CONTROL AGENCY
1825 W COUNTY ROAD 82
ROSEVILLE, MINNESOTA 55113
(612) 226-7342

July 10, 1980

Mr. Frank Hermann
Assistant U.S. Attorney
234 Federal Building
110 South 4th Street
Minneapolis, Minnesota 55401

Re: Reilly Tar & Chemical Corporation

Dear Frank:

We have reviewed the draft complaint of the United States in this matter and are pleased with it. The following suggestions and questions came up during our review:

(1) Reilly's Process

Paragraphs 9, 12, 24, 29 and 30 refer to Reilly's distillation of coal tar into creosote oil. This allegation is incomplete because Reilly's distillation process produced pitch and other products besides creosote oil. In addition, Reilly ran a coking facility during the earlier period of operation at St. Louis Park.

(2) State Litigation

Paragraph 11 refers to the State-City lawsuit in 1970 directed to air and water pollution. Because of the hold harmless problem, we would prefer the more precise phrase "surface water pollution". We would also like the last sentence of paragraph 11 changed to read: "The complaint was amended by the State of Minnesota in 1978 to allege pollution of the groundwater."

(3) Property Ownership And Naming of All Current Owners as Defendants

We think paragraph 13 may be in error in alleging that the City purchased "all but four acres of the Reilly Tar site" in 1973. Your title search should resolve this question.

We understand you intend to name all current owners of the former Reilly site as defendants. Since being served with a summons and complaint by the U.S. Marshal may be a jolt to some of the property owners, you may wish to add a statement that a given property owner "is named herein as a defendant only to insure that the remedial measures requested by plaintiff can be fully implemented". This language was used by the Justice Department in the Love Canal complaint. (See the attached page from that complaint.)

(4) "Chemical Wastes"

Paragraphs 15, 16 and 34 refer to pollution resulting from Reilly's handling of "chemical wastes". As became clearer after our document inspection last week, pollution was caused not only by wastes discharged but also by spills and leaks of coal tar products. It may be that the term "chemical wastes" is broad enough to cover product spills but we were concerned that its use might later lead Reilly to try to limit your proof on spills and leaks. Perhaps when you first use the term, you could define it to include raw coal tar and coal tar derivatives.

(5) PAH Concentrations

Paragraphs 19 and 20 compare PAH drinking water standards with PAH concentrations found in the drift aquifers near the site. The drift aquifers are not used for drinking water supply and we think a better comparison might be made with the contaminant levels found in St. Louis Park municipal wells 10 and 15. (These were included with my June 16 letter to Erica Dolgin and my July 3 letter to you.) Also, we understand that EPA has raised a question as to the comparability of the compounds in the drinking water standard and those found in the drift aquifer sample.

(6) Confusion Between Phenols and Phenolic Compounds

Paragraphs 21-23 use both terms and we question whether they can be used interchangeably. We understand EPA is looking into this question.

(7) The Deep (Hinckley) Well on The Site

Paragraph 28 alleges that the well is plugged with coal tar for the bottom 314 feet. We only know that it is plugged and that coal tar is found at the top of the fill and on the sides of the well. Bailing efforts have been unsuccessful so no testing has been done on the material below the 595-foot level. Perhaps the allegation could be modified to state that the well is filled with unknown material and that coal tar has been found on the sides of the well and the top of the fill.

(8) Spread of Contamination

Paragraph 30 alleges that aquifers have been contaminated "at least one mile to the east and southeast of the Reilly Tar site, . . . and at least one and one-half miles to the east and southeast of the site." This confusion should be corrected. It probably arose because we reported that the

drift-Platteville aquifer system is contaminated at least a mile in that direction and the Prairie du Chien-Jordan aquifer (the important drinking water aquifer) is contaminated at least one and one-half miles east and southeast of the site.

(9) Surface Water Contamination

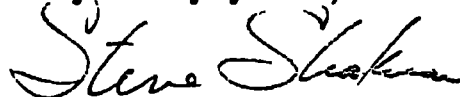
Paragraphs 31 and 37, and the prayer for relief allege present or future contamination of surface waters. We are not aware of present or anticipated surface water contamination, except for the slight contamination present in the storm sewer system ponds on the site and just south of the site.

(10) Omission of Continued Monitoring in Prayer for Relief

Paragraph 4.b. of the prayer for relief seeks monitoring of multi aquifer wells which are to be abandoned. No mention is made in the prayer of the need to monitor other existing wells (such as the 117 wells under study by the USGS) and to install additional deep wells which may be necessary for comprehensive monitoring. Since monitoring may be needed for decades, it will be a significant expense and should be more expressly included in paragraph 5 of the prayer for relief.

We hope these comments will be helpful. Please let us know when you have completed your review of this matter and decided on your course of action.

Very truly yours,



STEPHEN SHAKMAN
Special Assistant
Attorney General

SS:sjg

cc: Maureen A. Brennan
Erica Dolgin
Bob Leininger ✓

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10. The City of Niagara Falls, New York (the "City") is a public entity incorporated under the laws of the State of New York. The City owns property in the area of the Love Canal landfill. The City is named herein as a defendant only to insure that the remedial measures requested by plaintiff can be fully implemented by the City's action with regard to its own property.

11. The Board of Education of the City of Niagara Falls (the "Board") is a public entity incorporated under the laws of the State of New York. The Board owns property in the area of the Love Canal landfill. The Board is named herein as a defendant only to insure that the remedial measures requested by plaintiff can be fully performed by the Board's actions with regard to its own property.

12. The Niagara County Health Department ("the County Health Department") is a public entity in the State of New York. The County Health Department has the power to enter privately owned property in order to suppress or remove a public nuisance. The County Health Department is named herein as a defendant only to insure that the remedial measures requested by plaintiff can be fully implemented, if necessary, by the County Health Department's power of entry to suppress or remove.

13. Hooker operates a chemical manufacturing plant in Niagara Falls, New York which produces phenolic resins, metal finishing chemicals and equipment, agricultural chemicals, fertilizer, plastics and industrial chemicals. Its Niagara Falls operations have produced and continue to produce thousands of tons of chemical wastes each year.

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